

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Upper Sandusky and Caledonia, Ohio)

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MB Docket No. 03-7  
RM-10596

**RECEIVED**

**MAR 25 2003**

To: Assistant Chief, Audio Division, Media Bureau

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY COMMENTS**

Franklin Communications, Inc. ("Franklin"), by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby files its Reply to the Comments filed March 10, 2003, by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") which is seeking to reallocate Channel 240A from Upper Sandusky to Caledonia, Ohio, and modify the license for Station WYNT(FM), to reflect the change in community, as set forth in the Commission's multiple-docket *Notice of Proposed Rule Making*, DA 03-50, released January 17, 2003 ("NPRM")<sup>1</sup>. In opposition, Franklin shows the following:

In its "Comments in Opposition to Proposal," Franklin showed that Clear Channel's proposal is a ploy to replace its revenue stream from the sale of advertising in Marion, Ohio, that would be lost if WMRN-FM, Marion (licensed to a Clear Channel subsidiary) should be allowed to move into the Columbus, Ohio, market. Clear Channel would abandon Upper Sandusky, Ohio, leaving only a noncommercial religious station there. Clear Channel's true purpose is to sell advertising in nearby Marion. Its proposal

<sup>1</sup> Replies are due by March 25, 2003, so this pleading is timely filed.

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should be denied since it is not in the public interest, but only in Clear Channel's private interest.

On March 10, 2003, Clear Channel filed a perfunctory 4-page set of "Comments" merely restating the information in Clear Channel's Petition for Rule Making dated May 14, 2002.

In its Comments, Franklin showed that Caledonia is not a community for allotment purposes. There are apparently only **5** businesses in Caledonia excluding the post office and churches. Under *Pleasant Dale, Nebraska*, 14 FCC Rcd 18897 (1999), Clear Channel was obligated to provide information as to the businesses which it says exist to demonstrate that they are intended to serve the needs of Pleasant Dale as opposed to other areas. Clear Channel failed to provide this information either in its Petition for Rule Making or in its Comments. The Commission has said that this is a critical deficiency because "in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. See *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991) and cases cited therein."

Franklin urges the Commission to find that Caledonia is NOT a community for allotment purposes. Franklin has shown that Caledonia has only a part-time mayor. It is a place with apparently only five operating businesses, that provides few municipal services. Under these circumstances, the Commission should not find that Caledonia is a community for allotment purposes, and so deny Clear Channel's proposal.

Franklin has shown that Clear Channel's proposal does not present a preferential arrangement of allotments. Its proposal is judged under *Revision of FM Allotment*

*Policies and Procedures*, 90 FCC 2d 88 (1982). The FM priorities are as follows: (1) first fulltime aural service, (2) second fulltime aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to Priorities (2) and (3). In making its evaluation, the Commission considers the “totality of factors.” See *LaGrange and Rollingwood, Texas*, 10FCC Rcd 3337 (1995). The public interest is not served by removing WYNT, the only commercial station from Upper Sandusky, a community with 6,553 persons. Clear Channel’s proposal would leave only WXML, a noncommercial religious station in Upper Sandusky, while allotting Channel **240A** to Caledonia, a community of only 578 persons that does not qualify for an allotment. Clear Channel’s proposal would also result in a loss of service to approximately 26,000 persons, according to the NPRM. WXML is not an adequate substitute for the removal of WYNT from Upper Sandusky, and Clear Channel’s proposal should be denied on this ground as well.

Finally, Franklin showed that Clear Channel’s real aim in reallocating WYNT is the proximity of Caledonia to Marion, Illinois, where Station WMRN-FM, licensed to a Clear Channel subsidiary, has proposed to move to the Columbus market. Clear Channel merely desires to replace its lost revenue stream in Marion with its Upper Sandusky station. The Commission should not elevate the private interest of Clear Channel over the public’s interest. Under Priority 4 of *Revision of FM Allotment Policies and Procedures, supra*, the Commission should consider this as an additional reason not to adopt Clear Channel’s proposal.

## **Conclusion**

In light of the above, the Commission should deny Clear Channel's proposal.

Respectfully submitted,

**FRANKLIN COMMUNICATIONS, INC.**

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March 25, 2003

## CERTIFICATE OF SERVICE

I, Sherry Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on March 25, 2003, copies of the foregoing "Comments in Opposition" were sent via First Class Mail, postage pre-paid to the following:

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